

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA**

UNITED STATES OF AMERICA	*	CRIMINAL NO. 09-390
v.	*	SECTION: "I"
BENJAMIN L. EDWARDS, SR.	*	

* * *

FACTUAL BASIS

If this case had gone to trial, the Government would prove the following beyond a reasonable doubt through competent evidence and tangible exhibits that **BENJAMIN L. EDWARDS, SR.** is guilty of the following two (2) charges: wire fraud and tax evasion.

Evidence would be introduced to show that **BENJAMIN L. EDWARDS, SR.** was an unpaid, at-large member of the Board of Directors of the Sewerage and Water Board of New Orleans (S&WB), since 1989 and was to be reappointed by the Mayor of New Orleans.

Evidence would be introduced to show that **BENJAMIN L. EDWARDS, SR.** and his brother, Bruce L. Edwards, Sr., have been members of the Board of Directors of Third Shiloh Missionary Baptist Church (TSMBC) and Third Shiloh Housing (TSH).

Witnesses would testify that a Disadvantaged Business Enterprise (DBE) is defined as a small business that is owned and controlled by socially and economically disadvantaged individuals

who have been subjected to racial or ethnic prejudice or cultural bias, and who have limited capital and credit opportunities. One of the purposes of the program is to allow DBE's to be mentored by the prime contractor, grow their business, as well as establish relationships within the business community.

Witnesses would testify that **BENJAMIN L. EDWARDS, SR.** is also the Reverend/Master Teacher and Director of Third Shiloh Missionary Baptist Church, (TSMBC) located in New Orleans, Louisiana. Witnesses would testify that TSMBC received United States Internal Revenue Code, Title 26 U.S.C. Section 501(c)(3) non-profit tax status with the IRS in 1989.

Witnesses from the Internal Revenue Service would testify that in order to qualify for 501(c)(3) status, an entity must be organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes, or to foster national or international amateur sports competition, or for the prevention of cruelty to children or animals. Additionally, intervention in political campaigns or the endorsement/anti-endorsement of candidates for public office is strictly prohibited.

Witnesses would testify that as a member of the Board of Directors of the Sewerage and Water Board of New Orleans, **BENJAMIN L. EDWARDS, SR.** has been required to execute and has executed Confirmation Questionnaires issued by the New Orleans City Council each time his term expires and he is nominated by the Mayor for reappointment to another term on the S&WB, indicating his familiarity with ethics rules and laws. On March 28, 2000, **BENJAMIN L. EDWARDS, SR.** stated on his signed Confirmation Questionnaire that he has read the Code of Ethics for the City of New Orleans, that no entity in which he has an interest, has ever appeared before the Board to which he was proposed to be appointed, that neither he nor an immediate family

member has a financial interest in any contract involving the City of New Orleans, and that neither he nor any member of his immediate family is a party to a contract with the board, commission, or authority to which he is seeking to be appointed. **BENJAMIN L. EDWARDS, SR.** has never subsequently indicated that he or any members of his immediate family have had any financial interest in, or have been a party to any contracts with the S&WB or City of New Orleans.

Witnesses would testify that the S&WB of New Orleans is a political subdivision created to assist the city in the construction, operation, maintenance of water, sewerage, and drainage systems for the City of New Orleans.

Louisiana Revised Statutes 33:4096 and 33:4121 give the S&WB authority to establish water and sewerage rates to charge to its customers. The rates are based on the actual water consumed and on the costs of maintenance and operation of the water and sewerage systems, including the costs of improvements and replacements. These collected revenues are to be used by the S&WB for the maintenance and operations of the systems, the cost of improvements, betterments, replacements, and to provide for the payments of interest and principal on bonds payable. The S&WB also has the authority to levy and collect millage for the operation and maintenance of the drainage operations. As a result, the S&WB receives funding from the above described taxes that are assessed upon the citizens of New Orleans.

Testimony would show that the Board of Directors of the S&WB also has the power to award contracts to companies that are seeking to do business with the S&WB to maintain adequate drainage, sewerage collection, and drinking water, etc.

Witnesses would testify that Montgomery Watson Harza (MWH) is a private, employee-owned firm with more than 7,000 employees worldwide. MWH is headquartered in Bloomfield,

Colorado, and the company provides water, wastewater, energy, natural resource, program and project management, consulting and construction services to industrial, municipal and government clients in the Americas, Europe, Middle East, India, Asia and the Pacific Rim. In 1996, MWH was chosen by the S&WB as the program manager for the Sewer System Rehabilitation and Evaluation Program (SSREP). The contract is generally set for renewal on an annual basis. The original contract was entered into on July 10, 1996, with amendments entered into on August 15, 1997, September 2, 1999, December 20, 1999, July 27, 2000, October 6, 2000, January 29, 2001, March 21, 2001, April 3, 2001, March 1, 2002, June 6, 2003, July 18, 2003, June 25, 2004, October 31, 2005 and February 6, 2006. MWH received millions in emergency contracts from the S&WB after Hurricane Katrina, to assist the city in inspecting the sewerage and water system.

Witnesses would also testify that **BENJAMIN L. EDWARDS, SR.** asked MWH to make “scholarship donations” to his church, TSMBC, for over a decade. **BENJAMIN L. EDWARDS, SR.** agrees that not all of this donated money was used for “scholarship donations.”

Two witnesses would testify that James L. Jones Construction (JLJ) was formed as a company in 1987. **BENJAMIN L. EDWARDS, SR.** met the owner of JLJ in the mid 1990's and was instrumental in obtaining work for JLJ throughout the years with the S&WB and the company received DBE certification. Evidence would show that **BENJAMIN L. EDWARDS, SR.** asked JLJ to make “scholarship donations” to his church, TSMBC, and he agrees that not all of this donated money was used for “scholarship donations.”

Witnesses would testify that Fleming Construction Company (FCC) is a company located in Jefferson Parish, Louisiana. FCC was formed in 1954 and does business with the S&WB. FCC was used as a prime contractor on the sewer system upgrade. **BENJAMIN L. EDWARDS, SR.**

contacted MWH and FCC and had the companies use JLJ as a subcontractor on contracts, in order to satisfy the DBE percentage of their contracts.

FCC used JLJ as its DBE subcontractor on the job and on other jobs. Witnesses would also testify that **BENJAMIN L. EDWARDS, SR.** asked FCC to make “scholarship donations” to his church, TSMBC. **BENJAMIN L. EDWARDS, SR.** agrees that not all of this donated money was used for “scholarship donations.”

Witnesses and records would show that Management Construction Consultant Inspection, LLC (MCCI) was a company formed to provide inspection services associated with debris removal, identification of water leaks, and cleaning and assessment of sewerage collection and storm sewer systems. MCCI signed a contract with MWH for debris removal, identification of water leaks, cleaning and assessment of the storm sewer collection system on September 26, 2005. Initially, this contract between MWH and MCCI was not to exceed \$300,000, but on December 16, 2005, an amendment was added to the contract, increasing the compensation payable from \$300,000 to \$570,000. MCCI also received an additional contract on October 31, 2005. This contract was to assist MWH in the completion of sanitary sewer inspections for the S&WB, which included inspecting manholes for debris and visual inspections of surface conditions above sewer lines. This contract was not to exceed \$2,300,000. MCCI was not incorporated with the Louisiana Secretary of State until after Hurricane Katrina, on December 20, 2005. The contract was further increased on January 19, 2006, from \$2,300,000 not to exceed \$2,550,000. Records would show that MCCI never received status as a certified DBE, although an application was filed. A member of the DBE program would testify that the committee needed answers to a number of questions as well as documentation, yet MCCI didn't respond when several notices were sent to the listed address MCCI

provided. MCCI also previously requested a tax identification number with the IRS, yet never filed a federal tax return. MWH representatives would testify that they believed that MCCI was in fact DBE certified.

Witnesses would testify that Company A was formed as a company in 2008. Witnesses would testify that **BENJAMIN L. EDWARDS, SR.** asked MWH to hire Company A to perform work on behalf of the S&WB. Witnesses from MWH would testify that they were unaware of the fact that Company A was going to hire Bruce L. Edwards, Sr. as a consultant.

Witnesses and records would prove that **BENJAMIN L. EDWARDS, SR.** maintains control over personal bank accounts, as well as the bank accounts of TSMBC and TSH, which are located at Liberty Bank and Trust in New Orleans.

Records would be introduced into evidence to show that Bruce L. Edwards, Sr. maintained control over the MCCI bank account, located at Liberty Bank and Trust. On or about October 5, 2005, Bruce L. Edwards, Sr. opened the bank account for MCCI.

Numerous witnesses as well as records introduced, would show that beginning in February 1999 and continuing until the date of the indictment, the defendant, **BENJAMIN L. EDWARDS, SR.** and Bruce L. Edwards, Sr. devised and intended to devise a scheme and artifice to defraud various entities of money and property by means of false and fraudulent pretenses, representations, and promises by use of interstate wire transmissions.

Witnesses would testify that MWH hired various subcontractors at the request of **BENJAMIN L. EDWARDS, SR.** to assist with work performed on behalf of the S&WB and the citizens of the City of New Orleans, including MCCI, JIJ, and Company A.

Witnesses from MWH would testify that the company hired these subcontractors not

knowing that the companies were providing TSMBC with payments from the work performed on behalf of the S&WB.

Witnesses from MWH would testify that had they known about the payments from JLJ, MCCI, or Company A to TSMBC, that they would not have used the companies as subcontractors.

Witnesses would testify that during the described scheme, in order to pay these entities, MWH would email or fax a request from the MWH office in New Orleans, to MWH's headquarters in Colorado. MWH headquarters would then approve payment to be made on particular invoices and the funds would in turn be debited from the MWH account in California.

From February 1999 through September 2005, **BENJAMIN L. EDWARDS, SR.** asked for approximately \$100,000 in "scholarship donations" from MWH, to TSMBC. On approximately seven (7) occasions, **BENJAMIN L. EDWARDS, SR.** placed on TSMBC letterhead, his position as a member of the S&WB as well as Chairman of the Operations Committee, when asking MWH to make these "scholarship" donations. **BENJAMIN L. EDWARDS, SR.** knew that MWH would use interstate wire communications, via fax or email, from New Orleans to the company's headquarters located in Colorado, to request that checks be issued to TSMBC. On September 15, 2005, **BENJAMIN L. EDWARDS, SR.** caused an interstate communication to be made between Colorado and Louisiana in the amount of \$6,000 for a "donation" to the Third Shiloh Hurricane Relief Fund. Witnesses from MWH would testify that if they knew that the "scholarship donations" were not all going to students, they would not have given the money to TSMBC.

Witnesses would testify that **BENJAMIN L. EDWARDS, SR.** participated in meetings with representatives of MWH after Hurricane Katrina, to discuss work to be performed to assist the S&WB in the cleanup and rebuilding of the City of New Orleans in the massive recovery effort. He

asked MWH to hire MCCI which he and his brother, Bruce L. Edwards, Sr. secretly controlled.

Witnesses would testify that during the negotiations of MCCI's contract with MWH, **BENJAMIN L. EDWARDS, SR.** requested that MCCI be paid \$120 per hour. MWH later investigated MCCI and found that the company was not incorporated, and had no previous work history. Due to **BENJAMIN L. EDWARDS, SR.**'s official position with the S&WB, MWH ultimately hired MCCI at a rate of approximately \$90 per hour, and MCCI paid their employees approximately \$20 per hour to do the actual work.

Witnesses would testify that in November 2005, **BENJAMIN L. EDWARDS, SR.** caused Bruce L. Edwards, Sr., doing business as MCCI, to make payments totaling in excess of \$900,000 to TSMBC.

Witnesses would testify that in December 2005, **BENJAMIN L. EDWARDS, SR.** and Bruce L. Edwards, Sr. placed the names of sham directors onto MCCI's Louisiana Secretary of State filings as well as the DBE application in order to conceal from public view the fact that Bruce L. Edwards, Sr. ran the day to day operations at MCCI, and had signature control over the bank account. MWH would not have given contracts to MCCI had they not been deceived as to who actually was in control of MCCI, or had they not been deceived into believing that MCCI was in fact a certified DBE company.

Witnesses would testify that on December 12, 2005, **BENJAMIN L. EDWARDS, SR.** caused Bruce L. Edwards, Sr. to pay TSMBC \$350,000.

Evidence would show that between October 25, 2005 and February 15, 2006, **BENJAMIN L. EDWARDS, SR.** and Bruce L. Edwards, Sr. caused MWH to pay MCCI approximately \$3,000,000 via interstate wire transfers, from MWH's bank account in California to MCCI's bank

account in New Orleans, Louisiana at Liberty Bank.

Witnesses from Liberty Bank would testify as to all of the transactions between TSMBC and MCCI. Witnesses would also testify that the money that was deposited into TSMBC from MCCI, did not benefit TSMBC or go to a scholarship fund.

Witnesses would testify that in or about mid-2008 or early-2009, **BENJAMIN L. EDWARDS, SR.** met at a restaurant with an employee of MWH. After exiting the restaurant, **BENJAMIN L. EDWARDS, SR.** explained to the employee that he had to retrieve something from his vehicle. **BENJAMIN L. EDWARDS, SR.** then handed two (2) business cards to the employee for the purpose of having MWH award S&WB contracts to these companies. **BENJAMIN L. EDWARDS, SR.** later repeatedly asked the employee about the status of providing work to one of the companies (Company A). The employee explained that Company A was not a certified DBE to which **BENJAMIN L. EDWARDS, SR.** replied that they would soon have certified DBE status.

Witnesses and records would prove that on or about January 12, 2009, Company A received an initial contract with MWH. MWH would testify that they would not have hired Company A if they knew that Company A was going to hire Bruce L. Edwards, Sr. as a consultant in the amount of approximately \$12,000 per month. A witness would testify that **BENJAMIN L. EDWARDS, SR.** then received a portion of these funds.

Witnesses would testify that **BENJAMIN L. EDWARDS, SR.** withdrew money from the TSMBC bank account during the course of the scheme in order to facilitate the purchase of vehicles, fund political campaigns, and obtain other items of value for himself, others, and his brother, Bruce L. Edwards, Sr.'s personal benefit.

Witnesses would testify that **BENJAMIN L. EDWARDS, SR.** knew that MWH was

using federal wire transfers to deposit funds into the MCCI bank account located at Liberty Bank and Trust in New Orleans. Records would prove that payment requests were transmitted from the MWH offices in New Orleans to the corporate office in Colorado for processing. The payments would then be wired in interstate commerce from MWH's account in California to the MCCI account at Liberty Bank and Trust in New Orleans, Louisiana.

Evidence would show that for the purpose of executing the scheme and artifice to defraud, **BENJAMIN L. EDWARDS, SR.** caused to be transmitted in interstate commerce by means of a wire communication, certain signs, signals, and sounds, that is, the following interstate wire transfer, from MWH's account in California to MCCI's bank account in New Orleans, Louisiana:

COUNT	DATE	AMOUNT OF WIRE TRANSFER
15	02/15/06	\$63,279

Witnesses would testify that during the calendar year 2005, **BENJAMIN L. EDWARDS, SR.**, a resident of New Orleans, Louisiana, had and received taxable income in the sum of \$1,710,391.00.

Records would be introduced to show that the taxable income that was owing to the United States of America, was \$576,199.00.

Witnesses would testify that the defendant, **BENJAMIN L. EDWARDS, SR.**, had previously filed tax returns in the past and knew of his responsibility to accurately report income. Records would show that on or about October 16, 2006, in the Eastern District of Louisiana, **BENJAMIN L. EDWARDS, SR.** did willfully attempt to evade and defeat the income tax due by him to the United States of America for the 2005 tax year by failing to make an income tax return

on or before October 16, 2006, as required by law, to any proper officer of the Internal Revenue Service, by failing to pay to the Internal Revenue Service. Witnesses would also testify that the Internal Revenue Service, is an agency of the United States Department of Treasury.

Witnesses and records would show that the evasion was accomplished by concealing the source of the income by routing the funds through the tax-exempt, non-profit TSMBC and TSH bank accounts, through accounts in the names of others, causing checks to be converted to cash or cashier's checks, and by converting the funds to property for himself and others.

The above information comes from an investigation conducted by Special Agents of the Federal Bureau of Investigation and Special Agents of the Internal Revenue Service, interviews conducted, numerous records subpoenaed into a federal grand jury, interviews conducted during the investigation, and from recordings made during the investigation.

JON M. MAESTRI
Assistant United States Attorney
Louisiana Bar Roll No. 24838

DATE

BENJAMIN L. EDWARDS, SR.
Defendant

DATE

ROBERT JENKINS, ESQ.
Attorney for Benjamin L. Edwards, Sr.

DATE

